



# Montana Fish, Wildlife & Parks

August 25, 2003  
1420 East 6th Ave.  
P.O. Box 200701  
Helena, MT 59620

Environmental Quality Council  
Montana Department of Environmental Quality  
Montana Department of Fish, Wildlife and Parks  
Fisheries Division  
Endangered Species Coordinator  
Native Species Coordinator, Fisheries  
Water Resources Program Manager  
Missoula Office

Montana Department of Natural Resources and Conservation  
MT Environmental Information Center  
Montana Audubon Council  
State Historic Preservation Office  
U.S. Army Corp of Engineers, Helena  
U.S. Fish and Wildlife Service, Helena  
Tim Bodurtha, U.S. Fish and Wildlife Service, 780 Fish Hatchery Road, Kalispell, MT 59901  
Montana State Library, Helena  
Missoula County Conservation District  
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Allen and Laurie Ginn, P.O. Box 758, Bonner, MT 59823  
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Eric Norris, 1507 Larch Ave., Missoula, MT 59802  
George Neve, 117 S. 8<sup>th</sup> St. West, Billings, MT 59102  
Bob and Patti Griffes, P.O. Box 694, Seeley Lake, MT 59868-0694  
Jim Carlson, P.O. Box 307, Seeley Lake, MT 59868

Ladies and Gentlemen:

In June, you received a draft environmental assessment (EA) prepared for a Future Fisheries Project tentatively planned to improve in-stream flows in lower Trail Creek, a tributary to Morrell Creek located 1 mile south of the town of Seeley Lake in Missoula County. The attached Decision Notice contains responses to public comment. Please consider the draft EA and Decision Notice as the final document.

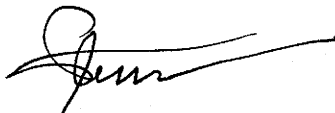
Based on the EA and public comment, it is my decision to proceed with providing funding through the Future Fisheries Improvement Program for the Trail Creek Flow Enhancement Project. Funding for this project has received final approval by the Fish, Wildlife and Parks Commission. I find there to be no

*Missoula  
Future Fisheries*

significant impacts associated with this action and conclude an Environmental Impact Statement is not warranted. The completed EA and the response to comments included in the attached Decision Notice are an appropriate level of analysis.

Thank you for your interest and involvement.

Sincerely,

A handwritten signature in black ink, appearing to read 'Glenn', with a long horizontal flourish extending to the right.

Glenn Phillips, Chief  
Habitat Protection Bureau  
Fisheries Division

**DECISION NOTICE**  
**Trail Creek Flow Enhancement Project**  
**Prepared By**  
**Montana Fish, Wildlife and Parks**  
**August 25, 2003**

**I.     Proposal**

Montana Fish, Wildlife and Parks (FWP) proposes to provide funding through the Future Fisheries Improvement Program to improve in-stream flows in lower Trail Creek, a tributary to Morrell Creek located 1 miles south of the town of Seeley Lake in Missoula County. The project would be accomplished by replacing a highly pervious portion of a one-mile long open ditch with a pipeline. The implementing parties would be Double Arrow Enterprises, Inc. (DAE) and the Double Arrow Ranch Landowners Association (Association). In return for financial assistance for the project, DAE would not divert more than 2.0 cubic feet per second (1.5 cfs during low flow periods) from Trail Creek and would lease to FWP for a period of 30 years the salvaged water created by the improved conveyance efficiency for the purpose of enhancing in-stream flow in Trail Creek. To further protect flow in Trail Creek, the Association, as related water right holders on Trail Creek, would commit to not divert their water and would lease a portion of their water right to FWP.

**II.    Montana Environmental Policy Act (MEPA)**

MEPA required FWP to assess the potential consequences of this proposed action for the human and natural environment. The proposal was detailed in a draft Environmental Assessment (EA) completed by FWP June 23, 2003. The 30-day comment period for this EA ended July 23, 2003.

Issues raised during the public comment period on the EA are addressed in the Comments section of this Decision Notice. The Draft EA and Decision Notice will serve as the final document.

**III.   Summary of Public Comment**

As of August 4, 2003, FWP had received two written comment letters outlining a series of concerns. No other comments were received. The issues outlined in the letters (summarized in italics) and corresponding responses by FWP are presented as follows:

*Issue 1. The draft EA wrongly states that there are no other water right holders located downstream of the Double Arrow Enterprises, Inc. water right.*

**Response:** The draft EA was in error for stating that there are no other water rights on Trail Creek located downstream of the water rights held by Double Arrow Enterprises, Inc. (DAE). Additional water rights claims on Trail Creek with flow rates of 40 gallons per minute for domestic use and 40 gallons per minute for "other purposes" are located between DAE claims and the confluence with Morrell Creek. However, these downstream claims will not be adversely affected by this proposed project because the project will enhance in-stream flow in Trail Creek downstream from DAE's point of diversion. Additionally, these small downstream claims are not expected to have a significant adverse affect on the proposed in-stream flow leases due to their low flow rates (claims total less than 0.18 cubic feet per second). Any water user who feels that they would be adversely affected by the proposed "change in appropriation water rights" associated with this project has an opportunity to object to the proposed "change" through the application process overseen by the Montana Department of Natural Resources and Conservation (DNRC).

***Issue 2.** Is it correct to assume that the remainder of project costs not covered by the \$24,372.00 granted by MFWP's Future Fisheries Improvement Program would be funded by Double Arrow Enterprises, Inc?*

**Response:** In the spring of 1992, DAE applied to the Future Fisheries Program to partially fund this ditch to pipeline conversion project for the purpose of increasing in-stream flow in Trail Creek. All remaining costs associated with the project in excess of the \$24,372.00 in approved Future Fisheries funds will be the responsibility of DAE. To provide some background - the Future Fisheries Improvement Act, passed by Montana's 1995 legislature, established a funding program through FWP for voluntary habitat projects that protect and enhance Montana's wild and native fishes. Anyone or any entity proposing a good project designed to restore or enhance habitat for wild and native fish will be considered for funding under the program.

***Issue 3.** It is erroneous to assume that the ditch is pervious for the entire one-mile reach. An alternative where only the obviously pervious portions of the ditch are treated should be considered.*

**Response:** Consultants from DAE assert that this one-mile reach of ditch loses approximately 85% of its content between the diversion point and the receiving pond. Although water loss likely is not uniform for the entire one-mile reach of ditch, repeated flow and efficiency measurements have not identified any specific ditch sites where water losses are exaggerated. Ditch lining was considered but rejected, in part, because the ditch would continue to have the ability to carry a large quantity of water - providing an opportunity to divert more water than the agreement calls for. The proposed 10-inch pipeline, due to its limited size, provides a means to control the maximum amount of water that can be diverted from Trail Creek.

***Issue 4.** The total estimated cost of \$34,252.00 will not be sufficient to cover all of the true costs of the project, especially when you consider the cost associated with re-vegetation, poor or total lack of equipment access, and the large amount of fill that will be required to reclaim the ditch?*

**Response:** The total cost of this project may or may not exceed \$34,252.00. The Future Fisheries Improvement Program is providing \$24,372.00 in funding toward completion of the project. It will be the responsibility of DAE to cover all costs associated with the project that exceed \$24,372.00. Construction logistics of the project are the responsibility of the implementing parties. The two implementing parties for this project are DAE and the Association.

***Issue 5.** The existing ditch banks are lined with vegetation, including some older trees. This ditch bank vegetation will result in additional costs associated with backfilling the ditch. This vegetation will be adversely affected by project construction (letter 1). Equipment access to the ditch will be difficult and will significantly damage the landscape and existing vegetation (letter 2).*

**Response:** Existing trees along the ditch banks may make equipment access to the one-mile reach of ditch difficult. Additional costs that may be created by this existing ditch bank vegetation will be the responsibility of DAE. The implementing parties estimate that approximately 50 to 60 trees will need to be removed in the process of installing the pipe. An agreement between DAE and the Association states "The association will be responsible for the easement for the pipeline through individual lots and cleanup of the surface along the pipeline". As a result, the Association will be responsible for clean up and landscaping of areas disturbed by the installation of the pipeline.

Issue 6. *Maintenance of the proposed pipeline may be greater than that of the existing open ditch (letter 1). Maintenance of the pipeline needs to be considered (letter 2).*

**Response:** The pipeline may or may not require greater maintenance than the existing ditch. Maintenance of the pipeline will be the responsibility of DAE.

Issue 7. *Flooding may adversely affect the proposed pipeline because the existing ditch is located within the Trail Creek floodplain (letter 1).*

**Response:** Although the chances are remote, it is possible that a flood event could adversely affect the installed pipeline. Under a large flood event, floodwaters possibly could partially uncover the buried pipeline. This type of flood event also could adversely affect the existing ditch. Again, maintenance of the pipeline will be the responsibility of DAE.

Issue 8. *Vegetation that has developed along the ditch over the years as a result of seepage will be adversely affected by the installation of the proposed pipeline (letter 1). The ditch attracts wildlife and is one of the reasons the lot was purchased (letter 2).*

**Response:** It is common for irrigation canals to develop vegetation along their banks and this riparian vegetation certainly is known to attract wildlife. However, it is equally as common for water rights holders to remove vegetation off of ditch banks to improve flow conditions and reduce evapo-transpiration losses in their canals. DAE, as owner of the canal, is under no obligation to operate it in a manner that would maintain the vegetation that has established along the ditch.

Issue 9. *What are the proposed changes in appropriation water rights and who is the contact person in DNRC?*

**Response:** The proposed changes in appropriation are as follows:

DAE leases 2.37 cfs from Claim #76F-W-099274-00 of 50 cfs for irrigation use, for the period of use from April 1<sup>st</sup> to October 31<sup>st</sup>, with a priority date of January 10, 1911 to FWP for instream flow purposes.

DAE leases 0.50 cfs from Claim #76F-W-099274-00 of 50 cfs for irrigation use, to be exercised when flows in Trail Creek immediately upstream of the current diversion point recede to 6.5 cfs or less, to FWP for instream flow purposes.

The Association leases 1.06 cfs from Claim #76F-W-099273-00 of 5.0 cfs for irrigation use, from April 1 to October 31, with a priority date of April 10, 1905 to FWP for instream flow purposes.

The contact person from DNRC, at least at this point in time, is Mr. Jerry Reddig. Mr. Reddig is located in the Missoula DNRC Water Resources Office.

Issue 10. *The existing ditch has been sealed with silt over the years and now displays only a minimal amount of seepage.*

**Response:** DAE consultants, based on repeated flow and efficiency measurements, assert that the 1-mile long reach of ditch loses about 85% of its contents between the point of diversion and the receiving pond. These data strongly indicate that this reach of ditch remains highly pervious.

*Issue 11. The amount of water that currently is being used for irrigation is minimal.*

**Response:** DAE claims to use approximately 5-8 cubic feet per second (cfs) of surface water from Trail Creek for diversionary purposes. This amount of diverted flow is not minimal, considering that the flow in Trail Creek during recent drought years has been less than 6 cfs.

*Issue 12. There is no guarantee that installing the pipeline will benefit bull trout and cutthroat trout populations.*

**Response:** Trail Creek supports both bull trout and cutthroat trout and provides important spawning and rearing habitat for these species. Trail Creek, because of its important habitat, is listed as a core area for bull trout within the Blackfoot-Clearwater drainage. Fisheries benefits resulting from water conservation projects and from preventing the entrainment of fish down irrigation systems have been well documented in numerous locations. These same fisheries benefits are expected to occur in Trail Creek as a result of this project.

*Issue 13. Numerous trees will be sacrificed to install the pipeline. These trees are the property of the landowners and they have the right to market them, even though access costs will be very high.*

**Response:** According to the President of the Association, trees removed as a result of the project are the property of the individual landowners. Landowners have the option of marketing their own timber at their own cost or using an Association contractor to market the removed timber.

*Issue 14. The 10- inch pipe will carry less water than the ditch is currently carrying. Won't that defeat the purpose and cause a greater problem? What will happen during runoff when the pipeline cannot carry the amount of water that the ditch could? Where will the water go?*

**Response:** The 10-inch pipeline will carry less water than the existing ditch. The salvaged water created by the project will remain in Trail Creek as in-stream flow.

*Issue 15. The affected landowners should be compensated for a portion of their land that would be destroyed and for costs to clear the land of the fallen timber.*

**Response:** According to the Association President, Association covenants provide for the rights of way of ditches, utility lines and other infrastructure. It will be the responsibility of the implementing parties (DAE and the Association), to insure proper easements are in place and to address potential landowner compensation issues associated with the project.

*Issue 16. Other alternatives for increasing stream flow in Trail Creek need to be considered.*

**Response:** Three other alternatives were considered in the draft EA. A water storage project was considered but rejected because of excessive cost and adverse environmental consequences. The purchase of a water right for additional in-stream flow was considered but rejected because of the lack of availability and the fact that Montana law prevents this process. Leasing other water rights in the drainage was considered but rejected because no other water rights in the drainage are

available for leasing.

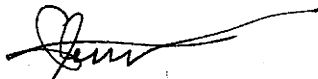
**IV. Modifications to the Environmental Assessment**

Based on the public comments received, modifications to the Draft EA are deemed to be unnecessary.

**V. Decision**

After review of the proposal and the corresponding comments, it is my decision to proceed with providing partial funding through the Future Fisheries Improvement Program to undertake a water conservation project on Trail Creek in concert with DAE and the Association. The action will benefit the fishery and riparian wildlife of Trail Creek.

I find there to be no significant impacts associated with this action and conclude that an Environmental Impact Statement is not needed. The completed EA and the response to comments included in this Decision Notice are an appropriate level of analysis.



Glenn Phillips, Chief  
Habitat Protection Bureau  
Fisheries Division